

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 98-150-C - ORDER NO. 98-491

JUNE 29, 1998

IN RE:	Application of Choctaw Communications	)	ORDER APPROVING	JMR
	L.C. DBA Smoke Signal Communications for	)	CERTIFICATE TO	
	a Certificate of Public Convenience and	)	PROVIDE LOCAL AND	
	Necessity to Provide both Local Exchange	)	LONG DISTANCE RESOLD	
	and Long Distance Telecommunications	)	TELECOMMUNICATIONS	
	Services within the State of South Carolina.	)	SERVICES	

This matter comes before the Public Service Commission of South Carolina ("the Commission") by way of an Application filed by Choctaw Communications, LC d/b/a Smoke Signal Communications ("Choctaw" or "the Company") in which Choctaw requested that the Commission grant a Certificate of Public Convenience and Necessity to allow the Company (1) to provide intrastate interexchange and local exchange, telecommunications services within the State of South Carolina. The Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1997), and the Regulations of the Commission.

By letter, the Commission's Executive Director instructed Choctaw to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. Choctaw complied with this instruction and provided the Commission

with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC").

A hearing was convened on June 17, 1998 at 10:30 a.m. in the Commission's Hearing Room. The Honorable Guy Butler, Chairman, presided. Seth Block, Corporate Controller of the Company, was present for Choctaw. The Commission Staff ("Staff") was represented by F. David Butler, General Counsel. SCTC did not appear at the hearing.

Prior to the hearing, Choctaw and the SCTC executed a Stipulation. The Stipulation was filed with the Commission prior to the hearing. The Stipulation was entered into evidence at the hearing as Hearing Exhibit No. 1. The Stipulation provides the following:

- (1) The SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Choctaw if the Commission makes the necessary findings to justify granting the Certificate and provided all stipulated conditions are met;
- (2) Choctaw agrees that any Certificate granted by the Commission will authorize Choctaw to provide service only to customers located in non-rural local exchange company ("LEC") service areas except as otherwise provided;
- (3) Choctaw agrees that it is not requesting the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas;

- (4) Choctaw agrees that it will not provide local service, by its own facilities or otherwise, to any customer in a rural incumbent LEC's service area, unless and until Choctaw provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law.
- Choctaw also acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause;
- (5) Choctaw agrees that if, after Choctaw gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then Choctaw will not provide service to any customer located within the service area in question without prior and further Commission approval;

- (6) Choctaw acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures and guidelines do not conflict with Federal or State law;
- (7) Choctaw and the SCTC agree that all rights under Federal and State law are reserved to the rural incumbent LECs, and that the Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled; and
- (8) Choctaw agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

This stipulation is consistent with our decision in Order No. 96-494 (Docket No. 96-073-C). It was signed voluntarily by both the SCTC and Choctaw and was filed with the Commission prior to the hearing in this matter. We therefore accept and approve the Stipulation.

At the hearing on this matter, Choctaw presented Seth Block to testify in support of the Application. The purpose of Block's testimony was to discuss the Application and the qualifications of Choctaw to provide the services for which Choctaw seeks authority.

### DISCUSSION

With respect to local exchange service, the record reveals that Choctaw seeks authority to provide resold local exchange services. S.C. Code Ann. §58-9-280 (Supp. 1997) provides that "the [C]ommission may grant a certificate to operate as a telephone utility ... to applicants proposing to furnish local telephone service in the service territory of an incumbent LEC."

After full consideration of the applicable law, Choctaw's Application, and the evidence presented at the hearing, the Commission finds and concludes that Choctaw's request for a Certificate to provide local telephone service in the form of resold local exchange services should be granted. The Commission's determination is based on the following criteria as provided in S.C. Code Ann. §58-9-280 (Supp. 1997) and the evidence presented which relates to that criteria:

(1) The Commission finds that Choctaw possesses the technical, financial, and managerial resources sufficient to provide the services requested. S.C. Code Ann. §58-9-280(B)(1) (Supp. 1997). To demonstrate Choctaw's managerial and technical qualifications, witness Block testified that Choctaw has more than sufficient technical and managerial resources available with which to provide telecommunications services in South Carolina. Block further stated that Choctaw's management has vast experience in the telecommunications industry and is well qualified to direct the efficient provision of quality services.

Regarding Choctaw's financial resources, the record reveals that Choctaw is a limited liability corporation organized and existing under the laws of the State of Texas,

but authorized to do business under the laws of the State of South Carolina. Block stated that Choctaw has ample financial resources available to operate as a telecommunications provider. Further, Block offered that Choctaw's investors are committed to maintaining adequate capital to provide the proposed telecommunications services in South Carolina.

No party offered any evidence in opposition to Block's testimony. Based on the undisputed testimony of Block, the Commission finds that Choctaw possesses the technical, financial, and managerial resources sufficient to provide the services requested.

(2) The Commission finds that Choctaw will provide services that will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (Supp. 1997). Block indicated that Choctaw intends to offer a full range of telecommunications services, including various resold interexchange and local exchange telecommunications services. Block specifically stated that Choctaw intends to provide services whose quality meets or exceeds all standards set by the Commission. No party offered any evidence to dispute Block's testimony. Based on the undisputed testimony from Block, the Commission believes, and so finds, that Choctaw will provide telecommunications services which will meet the service standards of the Commission.

(3) The Commission finds that Choctaw's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 1997). Block stated that authorizing Choctaw to provide service in South Carolina would not adversely impact affordable local exchange service and offered that certification of Choctaw should increase the availability of affordable local exchange service. No party offered any evidence that the provision of local exchange service by Choctaw would adversely affect local rates. Therefore, based on the

undisputed evidence of record, the Commission finds that provision of local exchange services by Choctaw will not adversely impact affordable local exchange service.

(4) The Commission finds that Choctaw will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (Supp. 1997). Block testified that Choctaw intends to abide by all universal service requirements. No party disputed Block's testimony. Based on the undisputed evidence of record, the Commission finds that Choctaw will participate in support of universally available telephone service at affordable rates.

(5) The Commission finds that the provision of local exchange service by Choctaw "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1997). Block offered that approval of Choctaw's application will benefit the public interest by providing innovative telecommunications services, increased customer choice, more efficient use of existing communications resources, and increased diversity in the supply of communications services. Block further offered that the entry of a new telecommunications provider should also increase competitive pressures that should foster lower prices and higher quality services. Block's testimony was undisputed as no party offered any evidence that approval of Choctaw's Application would adversely impact the public interest. Therefore, the Commission finds that approval of Choctaw's Application for a Certificate to provide local exchange service "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1997).

In addition to requesting authority to provide resold local exchange service, Choctaw requests authority to provide resold intrastate interexchange

telecommunications services. As stated above, the record reveals Choctaw's financial, technical, and managerial abilities to provide telecommunications services in South Carolina. The record further shows Choctaw's services, operations, and marketing procedures. Upon full consideration of Choctaw's Application and the evidence presented at the hearing, the Commission finds that Choctaw has the experience, capability, and financial resources to provide resold intrastate interexchange telecommunications services in South Carolina, and further the Commission finds and concludes that Choctaw's request for a Certificate to provide resold intrastate interexchange telecommunications services should be granted.

Therefore, based on the findings above, the Commission finds and concludes that the Certificate sought by Choctaw should be granted.

IT IS THEREFORE ORDERED THAT:

1. Choctaw is hereby granted a Certificate of Public Convenience and Necessity, and the accompanying authority, (1) to provide resold local exchange telecommunications services throughout South Carolina as modified by the Stipulation with SCTC, and (2) to provide resold intrastate interexchange telecommunications services within the State of South Carolina. Choctaw is hereby authorized to provide intrastate resold local exchange telecommunications services in South Carolina as modified by the Stipulation with SCTC, and Choctaw is hereby authorized to provide resold intrastate interexchange services, including interLATA services in South Carolina and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line



Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. With regard to Choctaw's local service offerings, Choctaw shall file, prior to offering local exchange services in South Carolina, a final tariff of its service offerings. The final tariff shall include the modifications and changes to the proposed tariff to which Choctaw agreed with the Commission Staff.

3. The Commission adopts a rate design for Choctaw for its intrastate interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. Choctaw shall not adjust its interexchange rates below the approved maximum level without notice to the Commission and to the public. With regard to adjustments of rates above the maximum rates, Choctaw shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of the Company's subscribers

shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S. C. Code Ann. Section 58-9-540 (Supp. 1997).

5. With regard to its intrastate interexchange services, Choctaw shall file its revised tariff within thirty (30) days from the date of receipt of this Order. The revised tariff shall be consistent with the findings of this Order, shall include all modifications suggested by Staff and agreed to by the Company, and shall be consistent with the Commission's Rules and Regulations.

6. With regard to its intrastate interexchange services, Choctaw is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

7. With regard to the Company's interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. Choctaw shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Choctaw changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, Choctaw shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993).

10. Choctaw shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Choctaw shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The proper form for filing the regulatory contact information is indicated on Attachment B. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced, and the Company is directed to comply with the Commission regulations unless waived by the Commission.

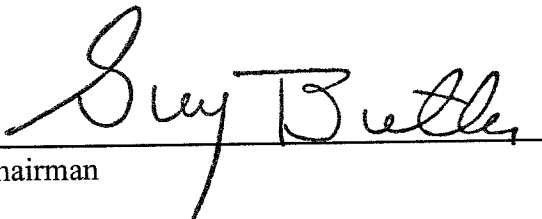
12. Choctaw shall conduct its business and operations in accordance with Commission decisions and Orders, both past and future, including, but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition. Further, Choctaw shall conduct its business and operations in accordance with all applicable statutes and Commission Rules and Regulations, unless specifically waived by the Commission.

13. The Stipulation filed by Choctaw and the SCTC is approved by this Commission, is binding upon Choctaw and the SCTC, and shall be implemented as set

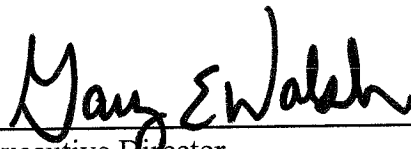
forth in the Stipulation. We therefore make no findings or conclusions regarding competition in the rural areas of South Carolina.

14. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director  
Deputy  
(SEAL)

**ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS  
FOR INTEREXCHANGE COMPANIES AND AOS'S**

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
FEI NO.

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY, STATE, ZIP CODE

\_\_\_\_\_  
PHONE NUMBER

- (1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.
- (2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.
- (3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS\* FOR  
12 MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.
- \* THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,  
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION WORK IN  
PROGRESS, ACCUMULATED DEFERRED INCOME TAX, CONTRIBUTIONS IN AID OF  
CONSTRUCTION AND CUSTOMER DEPOSITS.
- (4) PARENT'S CAPITAL STRUCTURE\* AT DECEMBER 31 OR FISCAL YEAR ENDING  
\_\_\_\_\_.
- \* THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION  
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.
- (5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND  
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.
- (6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE AMOUNT  
OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS WELL AS  
METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT (SEE #3  
ABOVE).

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME (PLEASE TYPE OF PRINT)

\_\_\_\_\_  
TITLE

DOCKET NO. 98-150-C - ORDER NO. 98-491  
JUNE 29, 1998  
ATTACHMENT B

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**INFORMATION OF THE AUTHORIZED UTILITY  
REPRESENTATIVES FOR INTEREXCHANGE, LOCAL  
AND AOS COMPANIES**

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION  
REGULATION 103-612.2.4(b), each utility shall file and maintain with the Commission  
the name, title, address, and telephone number of the persons who should be contacted in  
connection with Customer Relations/Complaints.

---

Company Name/DBA Name

---

Business Address

---

City, State, Zip Code

---

Authorized Utility Representative (Please Print or Type)

---

Telephone Number

Fax Number

---

E-Mail Address

---

This form was completed by      Signature

If you have any questions, contact the Consumer Services Department at 803-737-5230